

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on:15.09.2022
Pronounced on: 20.09.2022

+ **CRL.M.C. 3124/2022 & CRL.M.A. 13185/2022**

‘X’

..... Petitioner

Through: Mr. Vaibhav Mahajan, Ms.
Harshita Aggarwal and Mr.
Deepak Kakkar, Advocates

versus

STATE NCT OF DELHI & ‘Y’

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Manoj Kumar, P.S. Dwarka
South.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition has been filed on behalf of the father (petitioner herein) wherein the victim is the real son and respondent no. 2 is the mother of the victim who is minor. Though, there is no specific bar to mention the name of the accused facing trial in a case under Protection of Children from Sexual Offence Act, 2012 (‘POCSO Act’), Section 23(2) of POCSO Act provides that “no reports in any media shall disclose, the identity of a child including his name, address,

photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child.” It does not specify that in case it is the close family member of the victim child who is the Petitioner/Accused, his name be also masked as the disclosure of his name and details will disclose the identity of the child.

2. The present case is a case where the real father has been accused of alleged sexual abuse by the minor son and the respondent no. 2 is the victim’s real mother. In case the name of the Petitioner/Accused or Respondent no. 2/Mother/complainant who are victim’s real father and mother respectively is reflected in the judgment, it may lead to disclosure of identity of the child. Though, Section 23 of POCSO Act lays down the procedure for non-reporting of name of child in any media, this Court is conscious of the fact that the judgments of the Courts are reported in media and journals and such reporting of a case as the present one may lead to disclosure of identity of the child victim.

3. In such circumstances, this Court deems it appropriate to mention the name of the Petitioner/Accused as ‘X’ and the name of the Respondent no. 2/the complainant/mother as ‘Y’ in the judgment, the addresses of the petitioner as well as respondent no. 2 will also not be mentioned in the judgment.

4. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) for quashing of FIR No. 0613/2021, under Section 10/12 of POCSO Act, Police Station Dwarka, South District, Dwarka, New Delhi and consequent proceedings arising therefrom which is pending trial before the learned ASJ (POCSO), South-West, Dwarka Courts, New Delhi.

5. It is stated that the petitioner is the real father of the victim who is his son. The allegations against the accused are that he used to inappropriately touch his son and on multiple occasions over a period of three years, he had abused his son in the aforesaid manner. Due to his acts, the victim son had been experiencing extreme night mares and emotional disturbances. The case of the prosecution is that wife of the accused started noticing emotional disturbances of the son in April, 2021, coupled with withdrawal in educational and other activities as well as change in his sleeping pattern. On 08.07.2021, the wife and the son of the applicant had gone to live with her brother upon disputes having arisen between the parties, but the child's condition did not improve. She had consulted Child Psychologist and held sessions with the concerned doctor who during counselling informed her on 21.10.2021 that the child had been molested by his father. The doctor submitted her final report on 06.12.2021 which was not descriptive. However, later on the report was provided with specific details of sexual abuse, which are part of record.

6. The child also told his mother that on 10.06.2021 the petitioner had groped him, touched his bums and very badly kissed him and said, "*tumhe accha lag raha hai?*" He then told her that he managed to run out of the room.

7. An FIR No. 0613/2021 came to be registered at police station Dwarka, South District, Dwarka, New Delhi under Section 10 & 12 of POCSO Act, 2012. The petitioner was arrested and was later granted bail by the concerned Court. Chargesheet has been filed. Feeling

aggrieved by filing of the chargesheet, the present petition for quashing FIR and all consequent proceedings arising therefrom has been filed.

8. It is submitted by learned counsel for the petitioner that the FIR is based on false, fabricated and concocted facts due to estranged relationship between the petitioner and his wife and the wife had used the minor son who is the victim in this case to harass the petitioner and to satisfy her false ego. It is stated that the matrimonial dispute has been changed into a criminal offence and since the case is based on false assumption and baseless allegations, the FIR be quashed.

9. It is also stated that the respondent no.2/wife of petitioner is in habit of filing false and fabricated complaints against the petitioner and his family members and has also filed another false FIR No.441/2008 under Section 498A/323/504/506 IPC at Police Station Sector-49, Noida, Uttar Pradesh. However, the said FIR was quashed by Hon'ble High Court of Allahabad *vide* order dated 15.04.2011. It is therefore, stated that since respondent no.2 is in habit of filing false cases, the present FIR is also false. Learned counsel relies on certain photographs with his wife and the victim son as well as contradictions in statement under Section 161 CrPC, 164 CrPC and FIR of the victim to support his argument that the FIR in question is based on concocted story.

10. Learned counsel also states that the Court has power to quash FIR if the contents of the same do not prima facie constitute any offence and there is no cogent evidence on record to show commission of offence. It is stated that since the allegations in the FIR are totally absurd, inherently improbable and are not believable in any manner, the FIR be quashed. In this regard, learned counsel relies on the decision of

the Hon'ble Supreme Court of India in *State of Haryana and Ors. v. Bhajan Lal and Ors., 1992 suppl. (1) SCC 335*, wherein the Supreme Court had elaborately considered the scope and ambit of Section 482 Cr.PC/ Article 226 of the Constitution of India in the context of quashing the criminal proceedings. In para 102, the Supreme Court enumerated seven categories of cases where power can be exercised under Article 226 of the Constitution and Section 482 Cr.P.C. by the High Court for quashing the criminal proceedings. Relevant portion of the said judgment is as follows: -

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accented in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do

not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala-fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

(emphasis supplied)

11. The learned counsel further relies on ***Ahmad Ali Quraishi and Ors. v. The State of Uttar Pradesh and Ors.*** in which the principles laid down in ***Bhajan Lal*** (supra) were reiterated by the Hon'ble Supreme Court. Reliance is also placed upon the judgment of Madras High Court in the case of ***N. Chandramohan v. State and Anr.*** 2019 SCC OnLine Mad 3666 wherein the FIR under Section 6 of POCSO Act, 2012 was quashed in view of the fact that the victim girl had completely and categorically denied all the allegations, lodged by the victim's mother, against her father.

12. Learned counsel also relies on *Suhara and Ors. v Muhammed Jaleel 2019 SCC Online Ker 1237*, where the Court directly addresses this issue when it says: -

"28. ...There is a growing tendency in the recent years to foist false crimes against the biological father alleging sexual abuse of own child misusing the provisions of the POCSO Act when the serious fight for custody of ward is pending resolution before the Family Courts...."

13. It is also argued by the counsel that there is delay in lodging of the complaint, for which he has relied on the case of *State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699*.

14. Learned APP for the State on the other hand, opposed the submissions made by learned counsel for the petitioner and states that the allegations leveled against the present applicant have been substantiated by the report of the psychologist and counselor and the statement recorded under Section 161 CrPC and 164 CrPC. Therefore, at this stage, when the trial is yet to commence, it cannot be held that the contents of the FIR are false, fabricated and concocted.

15. The learned counsel for the petitioner has primarily relied on the case of *State of Haryana v. Bhajan Lal (1992) SUPP (1) SCC 335* to contend that the allegations in the impugned FIR are false and fabricated and thus, the FIR is liable to be quashed. The relevant portion of the aforementioned judgment is reproduced below: -

"Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."

“Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudges.”

16. To decide as to whether the present case falls within the ambit of settled position of law regarding the cases where FIR can be quashed, I have gone through the relevant statements of the victim child under Section 161 and 164 Cr.P.C.

17. A perusal of the same reveals that the victim has narrated specific incidents of sexual abuse, the manner in which it was committed and the places, time and dates of such abuses. The same are not being reproduced in this order considering the sensitive contents of same. Keeping in mind the above and the observation of the child counselor and the conclusion of the investigation culminating into filing of the chargesheet, this Court is not persuaded to reach a conclusion that the allegations leveled are absurd, highly improbable that such incident could not have happened so as to direct quashing of the FIR. While dealing with such a case, the Court remains conscious of the fact that child in this case is a minor who has given statement under Section 164 CrPC before the Magistrate. A statement under Section 164 CrPC is recorded by the concerned Magistrate after satisfying himself that the victim child is capable of giving statement and understanding the statement he is making before the Magistrate. This Court while exercising its extra ordinary powers under Section 482 CrPC cannot hold a trial, appreciate evidence or decide that the statements given by the child to the police, to the Magistrate, and to the counselor, he was

taken to, were tutored, false or motivated. This Court remains conscious of the fact that such cases cannot be treated as cases of matrimonial discord but note that the child who is victim in this case has his own individual constitutional right to get justice in case he has been sexually abused. To deny the child victim the right to get such justice only because one of the parties involved happens to be his real father and his father and mother have matrimonial discord will be highly unfair.

18. The truthfulness of the statement of the victim will become clear only during the trial of the case after the testimonies of the child and other witnesses are recorded and appreciated on the touchstone of cross-examination. Holding otherwise will amount to throttling the judicial proceedings and denying opportunity to get justice to the victim child.

19. Needless to say, the applicant/accused will have opportunity to cross-examine the witnesses including the victim, lead his own evidence and advance arguments before concerned Court. This Court, therefore, is of the opinion that the present case is not covered by the cases relied upon. The judgment of **Bhajan Lal** (*Supra*) is to be applied in the rarest of rare case, which cannot be said about the present case. As regards the reliance being placed upon judgment of **N. Chandramohan** (*supra*), the victim herself in the said case had completely and categorically denied all the allegations against her father, which is not there in the present case. As for the other judgments placed on record, this Court is of the opinion that the case at hand is not covered by those judgments as this Court is not satisfied that the allegations in the FIR at this stage can be held to be false or vindictive.

20. Keeping in view the contents of the FIR along with supporting statements under Section 164 Cr.P.C. by the complainant, fact that charge-sheet has been filed, the contention of the learned counsel for the petitioner that the allegations are baseless and false in nature appears to be premature for the purpose of quashing the FIR.

21. It is clarified that the observations made hereinabove shall have no bearing on the merits of the case during trial.

22. The petition stands dismissed in the above terms.

CRL.M.A. 13185/2022

23. In view of the order passed in CRL.M.C. 3124/2022, this application also stands disposed of.

SWARANA KANTA SHARMA, J

SEPTEMBER 20, 2022/ns